Supreme Court, U.S.
FILED
99 923 SEP 10 1999
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID L BRIGHT - PETITIONER,

VS.

NORSHIPCO AND NORFOLK SHIPBUILDING
AND DRYDOCK
CORPORATION - RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DAVID L BRIGHT
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PORTSMOUTH, VIRGINIA, 23703
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pro se, Petitioner

QUESTION(S) PRESENTED

1. Whether an affidavit accompanying a collective bargaining agreement submitted as evidence, which became effective in November of 1995 govern an employment discrimination charge filed with an administrative agency in July of 1994 as permissible under the Fifth Amendment and the Fourteenth Amendment of the United States Constitution.

2. Whether the procedural requirement of a complaint filed within 90 days after the issuance of a Notice of Right to Sue by the "EEOC" establish jurisdiction to pursue the right of trial by jury.

3. Whether the failure of an opportunity to be heard due to fraudulent acts and misrepresentation found when pursuing an "ADA" claim prevent a fair hearing once notified within a timely manner.

4. Whether the request by "the Respondents" for attorney fees from "the Petitioner" if entering this case back in court, to sanction the right to be heard when specific facts show a genuine issue for trial.

5. Whether the time limit for a motion for relief under Rule 60(b)(3) is more than one year after the judgment, whereby the judgment is measured by an affirmance on appeal.

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42 U.S.C. 1983-Civil Action For Deprivation Of Rights

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42 U.S.C. 12111, 12112(a)- Terms, Employment Discrimination

42 U.S.C. 12201- E.E.O.C. And Office Of Fed. Comp.

29 CFR 151, et - Federal Law Preempts The Policy

29 CFR 1601.12(b)- No Redeferred Requirement For An Amended Charge

29 CFR 1613.281- EEOC-Employee Can Seek Judicial Review Of Final Decision

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OTHER

Labor Management Relations Act, 1947 (Sect. 301)

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National Labor Relations Act

Federal Rules of Civil Procedure

Collective Bargaining Agreements (effective March 1991 **and** effective November 1995)[Norshipco agreement between Norfolk Shipbuilding & Drydock Corporation and Local No. 684 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers A. F. of L.-C.I.O. (Company Regulations)]

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

A. On June 28, 1999, the United States Court of Appeals for the Fourth Circuit denied - Petition for Rehearing and Rehearing En Banc. No. 98-2730 CA-96-985

B. On May 3, 1999, the United States Court of Appeals for the Fourth Circuit affirmed the district court opinion. Case No 98-2730- Unpublished per curiam

C. On November 17,1998, the United States District Ct. for the Eastern District of Virginia denied - Motion for Reinstatement (Motion for Relief). Case No. 2:96cv985

D. On April 6, 1998, the United States Court of Appeals for the Fourth Circuit denied- Petition for Rehearing and Suggestion for Rehearing in Banc. No. 97-1281, CA-96-985-2.

E. On January 26, 1998, the United States Court of Appeals for the Fourth Circuit affirmed the decision of the district court opinion. Case No. 97-1281. Unpublished per

curiam (Found no reversible error and declined to address claims raised by Appellant for the first time on appeal.)

F. On January 28, 1997, the United States District Court for the Eastern District of Virginia. Opinion and Order-Dismissal Without Prejudice. Case No. 2:96cv985

JURISDICTION

For cases from **federal courts:**

- The date on which the United States Court of Appeals decided my case was June 28, 1999.

  A timely petition for rehearing and rehearing en banc was denied by the United States Court of Appeals on May 3, 1999, and a copy of the order denying rehearing appears at Appendix B.

- A previous date on which the United States Court of Appeals decided my case was January 26, 1998.

  The timely petition for Rehearing with Suggestion for Rehearing in Banc was denied by the United States Court of Appeals on April 6, 1998, and a copy of the order denying appears at Appendix D.

  The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

For cases from **state courts**:

- The date on which the highest state court decided my case was on November 10, 1998. A copy of the decision appears at Appendix C.

- A previous date on which the highest state court decided my case was on January 28, 1997. A copy of the decision appears at Appendix F.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

1. Amendment V - "No person shall be....deprived of life, liberty, or property, without due process of law....."

2 . Amendment VII - "In Suits at common law,.....the right of trial by jury...according to the rules of the common law."

3. Amendment XIV - "No state shall make or enforce any law which shall abridge the privileges or..... deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On April 29, 1994 I , David L. Bright "the Petitioner" was informed by Norshipco and Norfolk Shipbuilding Corporation ("the Respondents") that they could not work with me on my restrictions and I would have to be retrained.

In May of 1994, I informed the union president of Local No. 684, Mr. Gary Daniel on the employment dilemma I was faced with. I was not able to file a grievance providing the discrimination clauses contained in the collective bargaining agreement (effective **March 1991**). He then called my former foreman, Mr. Steve Roberts, to ask about my employment situation. Mr. Daniel informed me to go to the E.E.O.C. I wrote two letters to my former foreman asking about my employment situation and one to the President of Norshipco. On May 25, 1994. I received a letter from the foreman stating he had no way of predicting what the future held for any type of work .

On June 15, 1994 I received a laid off notice from Norshipco, however, in **September 1994** I was asked to report back to work on a job found not accommodating to my injury, and I was never asked to return back.

On July 11, 1994, I, David L. Bright "the Petitioner" filed a charge of discrimination against Norfolk Shipbuilding and Drydock Corporation ("the Respondent") with the Equal Employment Opportunity Commission. (Charge No.: 121940778). A Request For Information form from the E.E.O.C. was addressed to "the Respondents" investigating the charge of discrimination within the "relevant period" between 04/29/94 - 06/15/94, with a response deadline of 07/26/94. The Respondents

outlined the conditions governing my employment with a CBA that became effective in May of 1991 which did not include a clauses of grievance procedures under disability nor "ADA" violations.

On October 28, 1994 a letter was addressed to the E.E.O.C. with a response from "the Respondents". The letter stated, " Enclosed is a copy of the current collective bargaining agreement, which outlines the terms and conditions currently governing his employment." Enclosed was a copy of the Addendum to the CBA between "the Respondent" and Local No. 684 effective March 11, 1991 with an amendment of changes that became effective on October 27, 1993.

On November 16, 1995, I "the Petitioner" received a certified letter dated November 14,**1995** from Ms. Mary Sharp, Human Resources Manager of "the Respondent" indicating it was the company policy to remove employees from the roles if absent from work for fifteen (15) months or more and the letter served to me was my 90 day notice.

In February of **1996**, I, "the Petitioner" received a certified letter from Ms. Mary Sharp "the Respondent" dated on February 14, 1996 stating my employment at was terminated.

On February 28, 1996, "the Respondent" Ms. Mary A Sharp, Manager of Human Resources signed a "Respondent Response Negotiated Settlement" form with the E.E.O.C. as **declining to consider resolution to the charge** by the negotiated settlement process.

On May 30, 1996, I filed **an addendum to my previous charge**

with the E.E.O.C., including the termination date.

On July 12, 1996, I was issued a notice of **Right To Sue** from the E.E.O.C.

The **entry date** of my Complaint to the U. S. District Court for the Eastern District was on October. 6, 1996.

On November 5, 1996, "the Respondents filed a Motion to Dismiss or Alternatively Motion to Stay the Action and Compel Arbitration and Memorandum in Support with supporting Affidavit received by Ms. Mary Sharp, Manager of Human Resources. The supporting Affidavit compelling arbitration was a collective bargaining agreement that became **effective in November of 1995 that included "ADA" and disability clauses for grievance procedures.**

On November 25, 1996, a Memorandum by David L. Bright in opposition was filed by my former attorney.

On January 10, 1997, a court proceeding was held . I "the plaintiff" was not notified until five calendar days after. I was not granted the opportunity to contests or question the November 1, 1995 collective bargaining agreement that was submitted as conditions governing my employment at Norshipco and Norfolk Shipbuilding & Drydock Corporation. Material facts and substantial evidence was not presented, I was denied proper representation by my former attorney.

On Jan. 28, 1997, the Judgment, Decision by Court of the proceeding was Dismissed Without Prejudiced. The Conclusion of the United States District Judge:

"Pursuant to Austin and this Court's interpretation of the Agreement, the Court **FINDS** that the Court has no jurisdiction over plaintiff's ADA claim, because the Agreement mandates the use of the grievance/arbitration process to resolve this claim.....Count One of plaintiff's complaint, which contains his ADA claim, is hereby **DISMISSED WITHOUT PREJUDICE**.

Because the Court **must** dismiss plaintiff's federal claim, the Court is without jurisdiction to hear plaintiff's remaining state-law claims, set forth in Counts Two and Three of his complaint. Accordingly, all remaining claims and counts in plaintiff's complaint also are hereby **DISMISSED WITHOUT PREJUDICE**."

On February 25, 1997, a Notice of Appeal was filed to the United States Court of Appeals.

On April 3, 1997, I, (the Plaintiff-Appellant) filed my notice terminating the service of my former attorney, Mark C. Brodeur. I was informed that my attorney was not considered lead counsel in my case. My lead counsel was Michael F. Improvento. At no time had I signed an agreement with Mr. Improvento. As of April 3, 1997 to present, I , David L. Bright as pro se Plaintiff-Appellant, now Petitioner continue to seek justice within the Rules 10-14 of the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

A. A CBA cannot provide an adequate substitution in protecting the federal statutory and constitutional rights that 42 U.S.C. 1983 is designed to safeguard.(Alexander v.Gardner-Denver) In Block v. Art Iron, Inc., the employer's motion for summary judgment was denied. The ironworker's ADA claim was not governed by the arbitration clause of the CBA and the ironworker was not precluded from pursuing his claim in federal court. Furthermore, the additional terms covered in the CBA made over a year after (Nov. 1995) the justifiable charge was filed with the E.E.O.C. (July 1994) was a clear and unmistakable act of fraud when used as conditions governing the employment by "the defendants" as evidence to dismiss my "ADA suit". When considering the date the agreement became effective, there wasn't an employment relationship with the employer. In Pryner v Tractor Supply Co., the court determined that workers' statutory rights are arbitratable only if the employee consents to arbitration. The union cannot consent to arbitration on behalf of the employee by signing a CBA that consigns the enforcement of statutory rights to union-controlled grievance and arbitration proceedings. In Faris v Gamble, the court said that the right to sue on a claim of discrimination is a statutory right which cannot be waived, and the process of collective bargaining does not sufficiently protect an individuals rights. Additionally, in Wright v. Universal Maritime Service Corp, the CBA general arbitration clause does not require Wright to use the arbitration procedure for alleged violation of the ADA. Therefore, the Supreme Court unanimously overturned a Fourth Circuit opinion

holding claims under the ADA subject to mandatory arbitration under a CBA.

As stated in Rule 10, the considerations governing this review apply to (b) and (c).

B. Several "ADA" claims have been dismissed due to Section 706(f)(1) and (f)(3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1), 29 C.F.R. 1601.28(a). (Austin v. Owens Brockway Glass Container, Inc. , Muth v. Cobro Corp.) The "Respondents" persuasively compared Austin v Brockway Glass Container, Inc. to my case by intentionally adding specific clauses to the CBA similar to the agreement with the employment conditions of Ms. Austin. The court stated, in Pryner v. Tractor Supply Co., how identifying the "essential conflict in the case as one between majority and minority rights, that "[t]he employers' position delivers the enforcement of the rights of these minorities into the hands of the majority." and that "this result is [not] consistent with the policy of these statutes or justified by the abstract desirability of allowing unions and employers to cut their own deals" However, I did receive a right to sue letter, and while during the investigation process of the E.E.O.C., "the Respondents" declined to negotiate a settlement within the E.E.O.C. process. In the United States District Court for the Eastern District, I ,"the Petitioner" followed procedural requirements and the mandatory requisites. The charge was filed with the E.E.O.C. within the 180 (or 300) days of the violation. I was issued a notice of Right-To-Sue and the complaint was filed in court within 90 days of the date of notice as well as the receipt of notice. In the United States Court of Appeal for the Fourth

Circuit, various exhibits indicated the procedures taken, following each requirements. Kent v Director, Mo. Dept. of Educ. The time limited for recommencement of an action is to measured from the date of the affirmance on appeal of a judgment or decision adverse to the Plaintiff, not from the date of the adverse decision or judgment . Guthiel v Gilmer, . The date of an effectively final affirmance may be deemed to be measured. Young v Garrett. Therefore, the United States District Court for The Eastern District in Norfolk nor the United States Court of Appeal for the Fourth District applied the decision of recommencement of action to the date of the affirmance on appeal. Interest of finality of judgment was decided while denying equal protection of the laws did not apply.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David L Bright

Date: 11/29/99

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
June 28, 1999

No. 98-2730
CA-96-985

DAVID L. BRIGHT

Plaintiff - Appellant

v.

NORFOLK SHIPBUILDING & DRYDOCK CORPORATION; NORSHIPCO

Defendants - Appellees

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-2730

DAVID L. BRIGHT,

Plaintiff - Appellant,

versus

NORFOLK SHIPBUILDING & DRYDOCK CORPORATION; NORSHIPCO,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert E. Doumar, Senior District Judge. (CA-96-985)

Submitted: April 20, 1999 Decided: May 3, 1999

Before MURNAGHAN and LUTTIG, Circuit Judges, and

BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

David L. Bright, Appellant Pro Se. Ronda Lynn Brown, VANDEVENTER BLACK, L.L.P. , Norfolk, Virginia; Thomas Michael Lucas, MCGUIRE, WOODS, BATTLE, & BOOTHE, Norsolk, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David L. Bright appeals the district court's order denying his Fed. R. Civ. P. 60(b) motion. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Bright v. Norfolk Shipbuilding & Drydock Corp., No. CA-96-985 (E. D. Va. Nov. 17, 1998). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* Although the district court's judgment is marked as"filed" on November 13, 1998, the district court's records show that it was entered on the docket sheet on November 17, 1998. Pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, it is the date that the judgment was entered on the docket sheet that we take as the effective date of the district court's decision. See Wilson v. Murray, 806 F. 2d 1232, 1234-35 (4th Cir. 1986).

FILED
NOV 13 1998
CLERK, U.S. DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT

Eastern District of Virginia
Norfolk Division

David L. Bright,

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2:96cv985

Plaintiff(s)

v.

Norshipco, et al.

Defendant(s)

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that plaintiff's Motion for Reinstatement is DENIED.

DATE: November 10, 1998

Norman H. Meyer, Jr., Clerk

/s/ Tammy Armstrong
(By)Deputy Clerk

A TRUE COPY, TESTE
Norman H. Meyer, Jr, Clerk
By /s/ Tammy K Armstrong
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
April 6, 1998

No. 98-1281
CA-96-985-2

DAVID L. BRIGHT

Plaintiff - Appellant

v.

NORSHIPCO; NORFOLK SHIPBUILDING
& DRYDOCK CORPORATION

Defendants - Appellees

On Petition for Rehearing with Suggestion for Rehearing In Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-1281

DAVID L. BRIGHT,

Plaintiff - Appellant,

versus

NORSHIPCO; NORFOLK SHIPBUILDING
& DRYDOCK CORPORATION,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert E. Doumar, Senior District Judge. (CA-96-985-2)

Submitted: January 15, 1998 Decided: January 3, 1998

Before MURNAGHAN and LUTTIG, Circuit Judges, and

BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

David L. Bright, Appellant Pro Se. Ronda Lynn Brown, Thomas Michael Lucas, VANDEVENTER BLACK, L.L.P. , Norfolk, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order dismissing his complaint claiming employment discrimination, wrongful termination, and intentional infliction of emotional distress. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Bright v. Norfolk Shipbuilding & Drydock Corp., No. CA-96-985-2 (E. D. Va. Jan. 29, 1997). Further, we decline to address claims raised by Appellant for the first time on appeal. See Singleton v. Wulff, 428 U.S. 106, 120 (1976); Bakker v. Grutman, 942 F.2d 236, 242 (4th Cir. 1991). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

FILED
JAN 29 1997
CLERK, U.S. DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT

Eastern District of Virginia
Norfolk Division

David L. Bright,

Plaintiff,

v.

Norshipco, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2:96cv985

[ ] **Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.**

[X] **Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.**

IT IS ORDERED AND ADJUDGED that Count One of plaintiff's complaint, which contains his ADA claim, is

DISMISSED WITHOUT PREJUDICE and that all remaining claims and counts in plaintiff's complaint are DISMISSED WITHOUT PREJUDICE.

January 28, 1997
Date

Norman H. Meyer, Jr.
Clerk

/s/ Tammy K. Armstrong
(By)Deputy Clerk, Tammy K. Armstrong